

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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| Illinois Commerce Commission |) | |
| On its Own Motion |) | |
| |) | |
| Investigation concerning Illinois Bell |) | Docket No. 01-0662 |
| Telephone Company's compliance |) | |
| with Section 271 of the |) | |
| Telecommunications Act of 1996 |) | |

**MOTION TO HOLD ISSUANCE OF FINAL ORDER IN ABEYANCE
AND CONDITIONAL REQUEST FOR FURTHER HEARINGS**

McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") hereby moves the Commission to (1) hold the issuance of a Final Order on Investigation in this docket in abeyance until the later of (i) the conclusion of the current session of the General Assembly and (ii) if proposed legislation currently pending in the General Assembly as Senate Bill 885 ("SB 885") is passed, until SB 885 becomes law by signature of the Governor or operation of law pursuant to Article IV, Section 9(a) of the Constitution of 1970, or, if vetoed by the Governor, until the procedures specified in Article IV, Section 9 of the Constitution of 1970 for vetoed bills have been completed; and (2) if SB 885 is enacted, to hold further hearings prior to issuance of the final Order to take evidence on the determinations to be made in this docket that are impacted by SB 885, pursuant to 83 Ill. Adm. Code 200.870. In support of its Motion, McLeodUSA states:

1. In its Initiating Order in this docket, the Commission recognized that the "public interest" requirement of 47 U.S.C. §271(d)(3)(C) encompasses, among other things, the issue of "competition in local exchange and long distance markets." (Initiating Order dated October 24, 2001, p. 2) The Initiating Order further stated that "To the extent that a particular public interest issue is unrelated to the competitive

checklist, but a party believes that it is important to the development of competition in Illinois, the party is free to comment on such issue. Should the ICC find such argument important to the development of local competition, it may, at its discretion, provide consultation on this issue to the FCC.” (*Id.*, p. 3) The Proposed Final Order on Investigation for this docket, issued by the Administrative Law Judge, would have the Commission rule on various “public interest” issues raised by the parties during this proceeding. (See Post- Exceptions Proposed Order released April 29, 2003, § IV)

2. In evaluating a Section 271 application for in-region long distance authority, the FCC, as part of its §271(d)(3)(C) “public interest” evaluation, is required to consider evidence of a “price squeeze”, created by the relationship between the applicant regional Bell operating company’s (“RBOC”) retail rates and the rates for unbundled network elements (“UNE”) it charges to competitive local exchange carriers (“CLEC”), that may preclude profitable local competition by CLECs (or explain why consideration of evidence of an alleged price squeeze is irrelevant to the public interest evaluation). See Sprint Communications Company, L.P. v. FCC, 274 F. 3d 549 (D.C. Cir. 2001). Since both the RBOC’s retail rates and its UNE rates would have been set by the state regulatory commission for the state for which the RBOC is seeking Section 271 authority, it is critical that the state regulatory commission also consider price squeeze evidence in performing its consultative role to the FCC.

3. On May 6, 2003, subsequent to the close of the “evidentiary” phase of, and briefing in, this docket, Amendment No. 1 to SB 885 was introduced in the General Assembly. As amended by Amendment No. 1, SB 885 was passed by the House of Representatives on May 7, 2003. As so amended, SB 885 would add to the Public

Utilities Act new Section 13-408 which would mandate that the Commission utilize specified “fill factors” and depreciation rates/expense in setting the rates for unbundled loops leased by SBC Illinois to CLECs. Further, SB 885 (new §13-408) would require the Commission to approve new SBC rates for unbundled loops within 30 days. Finally, SB 885 (new §13-408) would relieve SBC of the obligation otherwise imposed by 220 ILCS 5/13-505.1 to adjust its retail rates for the changes in its unbundled loop rates based on the “imputation” test prescribed by Section 13-505.1.

4. McLeodUSA believes that if SB 885 in its current form becomes law, and if the Commission were to authorize revised unbundled loop rates for SBC in accordance with SB 885, without SBC being required to implement corresponding changes to its retail rates, (1) SBC’s unbundled loop rates would be increased substantially over their current levels¹, and (2) the relationship between SBC’s increased unbundled loop rates and its retail rates would result in a “price squeeze” for McLeodUSA and other CLECs as described in Sprint Communications v. FCC, *supra*. Further, McLeodUSA believes that the components of the unbundled UNE loop calculation as prescribed by SB 885 (new §13-408) are not in compliance with TELRIC principles as enunciated by the FCC, and thus would result in SBC’s unbundled loop rates being not TELRIC-compliant.²

¹At the request of certain members of the House Public Utilities Committee, representatives of the Commission testified at that Committee’s hearing on May 6, 2003, that SB 885, if enacted, would cause SBC’s unbundled loop prices to increase as follows: Access Area A, from \$2.59 to over \$11; Access Area B, from \$7.07 to \$23; and Access Area C, from \$11.40 to over \$26. These estimates are consistent with the estimates calculated on behalf of McLeodUSA.

²As this Commission recognized in the Phase 1 Interim Order on Investigation in this docket, in a Section 271 proceeding, the FCC may reject a Section 271 application if it finds that the RBOC’s UNE rates violate basic TELRIC principles or fall outside the range that reasonable application of TELRIC principles would produce. See Phase 1

5. In order for this Commission to properly and adequately perform its consultative function with the FCC, and for this investigation and the Commission's final Order herein to address all relevant issues, it is imperative that this Commission consider evidence on, and take into account, the impact of unbundled loop rates set pursuant to SB 885 on the public interest under 47 U.S.C. §271(d)(3)(D) and on whether SBC Illinois' UNE rates are TELRIC -compliant. Certainly, a new TELRIC "zone of reasonableness" analysis is called for with respect to the increased UNE rates that would result from SB 885.³

6. The prospect and impact of new, increased UNE rates resulting from SB 885 is a material new development that McLeodUSA, other intervenors and Commission Staff could not have anticipated during the "evidentiary" and briefing stages of this docket, because Amendment No. 1 to SB 885 was first introduced in the House of Representatives Public Utilities Committee on May 5, 2003 (and the fact that SBC would be seeking to have such legislation introduced first became known only a few days before that). SB 885 (as amended) is a material new development that mandates that the Commission hold final action in this docket in abeyance until it can be finally determined if SB 885 becomes law, and if it does become law, holds further hearings on the impacts of SB 885, as described above.

WHEREFORE, McLeodUSA Telecommunications Services, Inc., respectfully requests that the Commission (1) hold the issuance of a Final Order on Investigation in

Interim Order on Investigation, par. 316-320. (These paragraphs are reproduced at par. 351-355 of the Post Exceptions Proposed Final Order on Investigation.)

³Of course, if SB 885 does not become law, the additional hearings requested herein will not be necessary. It is for this reason that McLeodUSA's request for additional hearings is conditional.

this docket in abeyance until the later of (i) the conclusion of the current session of the General Assembly and (ii) if proposed legislation currently pending in the General Assembly as Senate Bill 885 ("SB 885") is passed, until SB 885 becomes law by signature of the Governor or operation of law pursuant to Article IV, Section 9(a) of the Constitution of 1970, or, if vetoed by the Governor, until the procedures specified in Article IV, Section 9 of the Constitution of 1970 for vetoed bills have been completed; and (2) if SB 885 is enacted, to hold further hearings prior to issuance of the final Order to take evidence on the determinations to be made in this docket, pursuant to 83 Ill. Adm. Code 200.870.

Respectfully submitted

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